**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**W.P. No. 1027 (M/B) of 2003**

Amarpali Institute of management &
Computer Applications, Haldwani,
Through Narendra Dhingra,
Joint Secretary, Haldwani,
District Nainital.

….. Petitioner.

Versus

Kumaun University,
Nainital through its Registrar,
and others

…Respondents.

Mr. Rajnit Saxena, learned Advocate for the petitioner.
Mr. B.D. Upadhyaya, Advocate for the respondent No. 1.
Mr. N.B. Tewari learned Chief Standing Counsel for the State.

**Coram: Hon. P.C. Verma, A.C.J.,**
**Hon.Rajesh Tandon, J.**

Date: 23rd December, 2003

**Per Hon'ble Rajesh Tandon, J.**

By the present writ petition, the petitioner has prayed for the issued of a writ, order or direction in the nature of mandamus directing the respondents not to interfere in the decision of the petitioner in filling up 50% seats of the B.Ed. classed by the Management / petitioner under the management quota.

Brief facts giving rise to the present writ petition are that the petitioner is a private unaided educational institution running under Self-financing Scheme.

According to the case of the petitioner, the Institution has been granted recognition for running B.E.D. classed from Kumaun University, Nainital and the Government of Uttaranchal is not permitting the petitioner to fill up the seats independently and is also putting restrictions on the petitioner. The petitioner has submitted that there are different kind of seats in the private unaided institutions like

I. General Seats

II. Fee Seats

III. Payment Seats

IV. NRI/Management Seats.

The petitioner has submitted that in all the categories of seats different rates of fees were fixed by the State Government. The petitioner has submitted that earlier in the case of TMA Pai Foundation V/s State of Karnataka reported in A.I.R. 2003 Supreme Court 355, the Apex Court has considered the question of fixation of fees by the State Government for private unaided institutions established under Self-financing Scheme as well as the percentage of seats to be filled by the management. The Apex Court has laid down the guidelines for the admission and fees structure of fee seats and payment seats.

From time to time, the Government of Uttar Pradesh, by the Government Orders, has framed guidelines as to how the admission will be done in BA Classes as well reservations of B.A. admissions.

On 11.11.1997 the Secretary of the U.P. Government issued a Government Order No. 1969-1960 laying down the standards in the Self-financing Scheme Higher Education.

On 18th July 2001 the Secretary of the Uttaranchal Government issued a Government Order for giving reservation to Self-financing institutions in the following manner:-

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|---|---|---|---|
| I. | Schedule Caste | - | 19% |
| II. | Schedule Tribe | - | 0.04% |
| III. | Other Backward Classes | - | 14% |
| Iv. | Ladies | - | 20% |
| V. | Ex-Army Personal | - | 0.02% |
| VI. | Handicapped Persons | - | 0.3% |
| VII. | Dependents of Freedom Fighters | - | 0.2% |

The petitioner, who is running the management and computer courses in the name of Amarpali Institute of management & Computer Applications, sent a letter to regional Office, National Council for Teachers Education for starting B.Ed. classes.

The National Council for Teaches Education, Northern Regional Committee issued an order on 31.12.2001 in the name of Modern Academy indicating that Rs. 5,000/- is required for the new institutions, who want to increase the in take capacity for the session 2002-2003. The petitioner has submitted that on 26.06.2002, National council of Teachers Education, Northern Regional Committee issued a letter in the name of Director, Amarpali Institute of management & Computer Applications, Haldwani with regard to the approval of B.E.D. classes, The conditions, which were imposed by the National Council of Teachers Education is quoted below:

> "Now, therefore, in exercise of the powers vested under Section 14(3)(a) of the NCTE Act, 1993, the Regional Committee hereby grants recognition to Amarpali Institute of Management and Computer Applications, Haldwani, Civil Lines, Haldwani, Uttaranchal – 263139 for B.E.d. one year course from the academic session 200202003 with an annual intake of 100 (One Hundred) students subject to fulfillment of the following:
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> a. That the institution will ensure that Principal/head and at least Seven faculty members are in position for an intake of 100 (One Hundred) students before commencement of the course and a report of this effect duly verified by the Registrar of the concerned university shall be sent to the Committee within one month of commencement of the course.
> b. The institution shall within one month of the receipt of recognition order; convert the Endowment Fund account into a joint account in the from of FDR only for a period of not less than sixty months (Six year) in a Nationalized bank (and not any other certificate) to be operated alongwith an official of the Regional Committee.
> c. That the Reserve Fund for an amount equal to three months salary of the staff be maintained, in the from of FDR in faovur of the management / institution, for a

period of not less than sixty months. (Five years) in a Ntionalized Bank.

d. The institution shall comply with the various all other norms and standards as prescribed in the NCTE Regulations.

Simultaneously, the Vice Chancellor of the Kumaun University, national Informed Chancellor of the Kamaun University, Uttaranchal Dehradun that temporary affiliation for B.Ed. classes may be granted to Amarpali Institute of management & Computer Applications, Haldwani.

According to the petitioner, the Group Director, Amarpali Institute of management & Computer Applications, Haldwani informed the Vice Chancellor of the Kamaun University, Nainital asked the Vice Chancellor to approve the process for admission of the students for B.Ed. Courses. On 18th June 2003, the Governor of Uttaranchal, Dehradun being a Chancellor of the University informed the Vice Chancellor of the Kamaun University, Nainital that the temporary affiliation to Amarpali Institute of management & Computer Applications, Haldwani is being given for B.Ed. classes for one year. Thereafter on 9th July 2003 Kumaun University, Nainital informed the Director of the Amarpali Institute of Management & Computer Applications, by which the Kumaun University, Nainital advised the Institute for contacting the Government of Uttaranchal for the year 2003-2004. The affiliation of B.Ed. Classed in Amarpali Institute of Management & Computer Applications has been extended up to 30.06.20.4.

The grievance of the petitioner by way of the present writ petition is that the Uttaranchal Government is not permitting the petitioner to fill up the management quota in accordance with the judgment of the Apex Court in Islamic Academy of Education & other Vs state of Karnataka & others repotted in 2003(II) All India Cases 65 and the Uttaranchal Government should not interfere in the right of the Management in this regard. Relevant averments made in

the writ petition with regard to 50% seats to be filled by the Committee of Management is quoted below:-

> "That in the present case it is also apparently clear that the question of power of the committee of management to fill up atleast 50% seats are reasonable request and there is no harm that 50% seats of B.Ed. classes are filled up by the committee of management. It is also to be noted here that the management had demanded the fees structure of Rs. 35000/- per student but only Rs. 30,000/- per student has been allowed and one thing is very clear that the management is being harassed by the respondents by curtailing the power of the management to fill up at least 50% seats but in the instant case the action of the respondents in curtailing the power of management to grant the power to fill up only 20% seats is arbitrary action of the Govt. More so, the Uttaranchal Govt. is encouraging the people to set up the self financing institution and in setting up the self financing institution no conditions are fulfilled by the institution to meet the requirement and once the requirement is met then lot of money spent to run the institution and then the Govt. is keen to take entire control of filling up the seats and thus the management has got no power whatsoever after investing so much and therefore, it is quite clear that there is no harm in giving the management right to fill up at least 50% of the B.Ed. seats, so that in the very low fees allowed by the respondents is not possible for the petitioner to pay salary to teaching and non teaching staff and this management quota should be atleast 50% of the total seats, thus, this view has also been accepted by the Allahabad High Court which is apparently clear from the interim orders passed by Allahabad High Court. More so, the following quotations TMA Pai Foundation V/s State of Karnataka 2002 (Vol 8) SCC page 481 and judgment of the Supreme Court of India in the case of St. Stephan College Vs University of Delhi 1992(1)SCC page 558 and also laid down in various judgment

shows that the committee of management should have been provided a right to fill up at least 50% seats and thus the law laid down by the Supreme Court of India is binding on the respondents and the same is law of land."

The petitioner has relied upon the judgment of the Allahabad High Court, where the private colleges had fixed their own fee, a committee has to be constituted to be headed by a retired Judge of the High Court to examine the fee structure and the fee fixed by the Committee would be binding on the Government and the private institutions and they cannot charge any excess fees. A permission has also been granted to fill up 50% seats in B.Ed. courses themselves.

Counsel for the petitioner has referred the judgment of the Apex Court in Islamic Academy of Education & others Vs State of Karnataka & others reported in 2003(II0 All India Cases 65, where the Apex Court has held that so far as they ears 2003-2004 is concerned the permission has been granted to the management to fill up the seats to the extent of 50% and the remaining 50% will be filled up by the State Government. The relevant observations are quoted below:-

> "So far as the year 2003-2004 is concerned, time is running out as the outer time for admission is fast approaching or has gone. To meet the urgent situation without…..into the issues involved in the various petition/applications, we direct that the seats be filled up by the institution and the State Government in the ration 50.50. However, if by any interim order, this Court has permitted any institution to fill up a higher percentage of …..and the seats have been filled up accordingly, the same shall not be disturbed..is made clear that due to the time constraint this arrangement has been made, without deciding the contentious issue involved in various pending cases."

The Apex Court has also relied upon the observations from the judgment of Unni Krishnan J.P. & others Vs State of Andhra Pradesh & others reported in 1993 (1) SCC 645 to the following effect:

"(a) That a professional college should be established and /or administered only by a Society registered under the Societies Regulation Act, 1860 or the corresponding Act of State or by a Public Trust registered under the Trusts Act, or under the Wakfs Act, and that on individual, firm, company or other being of individuals would be permitted to establish and / or administer a professional college.

(b) That 50% of the seats in every professional college should be filled by the nominees of the Government of University, selected on the basis of merit determined by a common entrance examination, which will be referred to as "free seats". The remaining 50% seats ("payment seats") should be filled by those candidates who pay the fee prescribed therefore, and the allotment of students against payment seats should be one on the basis of inter se merit determined on the same basis as in the case of free seats."

So far as the fee structure is concerned, the Apex Court has observed as under:-

"Scheme of 'free' and 'payment' seats was evolved on the presumption that the economic capacity of 50% of admitted students would be greater that the remaining 50% whereas the converse has proved to be the reality. In this scheme, the 'payment' seat student would not only pay for his own set, but also finance the cost of a 'free seat' classmate. It seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the edge over rural students. In practice, it has been the case of the marginally less merited rural or poor students bearing the burden of a rich and well exposal and urban students.

As regards the fee structure, it was held that the fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff

for appointment or nominating students for admissions would be unacceptable restrictions. Although an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity and that exists by virtue of the fund generated by it, including its loans or borrowing of the management of the private institution include the admission of students and recruiting staff and the quantum of fee that is to be charged.

An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of studies are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seeks admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the from of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any did from the government, to determine the scale that it can charge from the live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions has been started by private parties who do not seek any government aid. In a sense, a prospective student has various options open to him / her where, therefore, normally economic forces open to him / her where, therefore, normally economic forces have a role to play, The decision on the fee to be charged must necessarily be left to the private education institution that does not seek or is not dependent upon any funds form he Government."

In the light of the facts stated above, we direct the respondents by way of a writ of mandamus not to interfere in filling the 50% quota of the management by the petitioner. We further direct that so far as

the fee structure is concerned, the same shall be fulfilled by the norms set up by the Apex Court (supra).

State of Uttaranchal is directed to constitute a Committee to be headed by a retired Judge of the High Court to examine the fee structure in accordance with the directions of the Apex Court in Islamic Academy of Education & others Vs State of Karnataka & others reported in 2003(II) All India Cases 65.

The fee structure fixed by the Committee would be binding on the Government and the private institutions and they cannot be permitted to charge any excess fee.

Till the matter is decided by the Committee to be appointed by the State Government as directed by the Apex Court, the Institution shall be permitted to collect the fee which they were charging in the previous years.

Fee collected by the Institution shall abide by the decision of the Committee.

In the meantime, we permit the petitioner to fill up 50% seats in B.Ed. courses themselves.

Subject to the aforesaid observations, the writ petition is disposed of. No order as to costs.

**(Rajesh Tandon, J.)** **(P.C. Verma, A.C.J.)**

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